IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2045 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW BANK OF INDIA
Versus
MUNICIPAL CORP & 2 ORS

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Appearance:
MS MALTIBEN N MODI for Petitioner No. 1 - Absent
MR SN SHELAT for Respondents No. 1-2
MS NANDINI JOSHI, AGP for Respondent No. 3

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 07/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The petitioner challenges the constitutionality of the provisions of Section 2(1)(A) read with Section 2(54) of the Bombay Provincial Municipal Corporations Act, 1949 and Rule 7 of the Taxation Rules in Chapter VIII of Schedule 'A' to that Act as ultra vires the State Legislature and offending the provisions of Article 14 of the Constitution of India and Entry No. 49 in the State Legislature in the Seventh Schedule to the Constitution.

2. The constitutionality of the provisions of Section 2(1)(A) has been upheld by the Division Bench of this court in Bannett Coleman & Co. Ltd. vs. The Municipal Corporation of the City of Ahmedabad & Others reported in 1996 (1) G.L.H. 97. The High Court, in terms, negatived the challenge against the provisions of Section 2(1)(A)(aa) and (aaa) which was raised on the ground on which the provisions are challenged in the present petition and held that an arbitrary exercise of power by a functionary is, certainly, not immune to challenge on the ground that the same is, per se, discriminatory and, therefore, violative of Article 14, but such arbitrary exercise of power cannot be equated with an Act of the Parliament or the Legislature enacting a law (See para 10 of the judgment). In para 13 of the judgment, it was held that it was not unknown in taxing statutes that sometimes tax on tax is levied. It was held that the Act presumes, and rightly so, that if such liability is not required to be borne by the tenant, then the rent, which would be fixed, would be considerably higher. It is for this reason that grossing up is done and the annual letting value is calculated by taking the rent payable by the tenant into consideration. It was, therefore, held that no constitutional provision was violated by the Act so providing for grossing up. The contention that the house tax was, in pith and substance, a tax on income from property was also rejected in para 14 of the judgment. In view of the decision of this court in Bannett Coleman & Co. Ltd. (supra), we do not find any merit in any of the contentions raised in this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

( R.K. Abichandani, J. )

( M.C. Patel, J. )

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